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Sales

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Community Property—Tort Liability. In *Laframboise v. Schmidt,* 42 Wn.2d 198 (1953), plaintiff, mother of a six year old girl, arranged for defendant and his wife to care for the child while she was in Alaska. Defendant took indecent liberties with the child. Plaintiff, as guardian *ad litem,* asks damages against defendant's community property. *Held:* The husband was managing community property at the time he committed the act; the community is liable. The holding is in line with the Court's enunciated policy of giving wide range in community property cases to the scope of the husband's statutory managerial powers in tort actions. See Comment, 23 WASH. L. REV. 259 (1948).

Real Property—Adverse Possession—Segregation of Mineral and Surface Rights for Tax Purposes. In *McCoy v Lowrie,* 42.2d 24, 252 P.2d 415 (1953), the plaintiff sought to obtain title to certain mineral rights under the provisions of RCW 7.28.080, which permits any person having color of title to vacant and unoccupied land to obtain title by paying taxes upon such land for a period of seven successive years. There had been a prior severance of title to the mineral rights and title to the surface rights, but no segregation for taxation purposes. The deed of conveyance to the plaintiff contained no indication of the prior severance. Judgment for plaintiff was reversed. Since, where there has been no segregation for taxation purposes, payment of the taxes on the land does not constitute payment of the taxes on the mineral rights.

Torrens Act—Execution Creditor Under Own Levy not Purchaser "for Value in Good Faith." *Finley v. Finley,* 143 Wash. Dec. 696, 264 P.2d 246 (1953), was a divorce action in which the wife joined, as defendant, the husband's execution creditor for purpose of quieting title to certain real property. The property, purchased from the separate funds of the plaintiff during marriage, had been erroneously registered as community property under RCW 65.12 (Torrens Act). The defendant execution creditor had purchased the property at an execution sale resulting from his own levy. In reversing judgment for defendant, the court held that an execution creditor who purchases land at an execution sale of his own levy is not a purchaser "for value and in good faith" under RCW 65.12.195, and is not entitled to its protection. Hence, the wife was entitled to show that although the property was registered in the name of the community, it was her separate property, and not subject to execution to satisfy a judgment against the husband.

SALES

The cases handed down in 1953 added little to the law of sales. In some instances appeals were taken that seem, in retrospect, to have been ill-advised. It is elementary, of course, that the primary responsibility of the Supreme Court is to resolve issues of law, not to review findings of fact. Nevertheless, in at least three of the cases in the field of sales,[1] the court is found in the unfortunate position of having to base its discussion almost solely upon factual issues. In none did the appeal

[1] Madden v. Herzog, 42 Wn.2d 666, 257 P.2d 779 (1953); Lacey Plywood Co. v. Wienker, 42 Wn.2d 719, 258 P.2d 477 (1953); Eliason v. Walker, 42 Wn.2d 473, 256 P.2d 298 (1953).

result in a reversal: "We do not think the evidence preponderates against the findings, and they will not be disturbed."[2]

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Conditional Sales Contracts—Election of Remedies by Vendor. In *Washington Cooperative Chick Ass'n v. Jacobs,* 42 Wn.2d 460, 256 P.2d 294 (1953), a conditional vendor brought an action against third parties who, with knowledge of the conditional sales contract, purchased the conditionally sold property from the conditional vendor. The plaintiff had commenced a previous action against the conditional vendee to recover the purchase price, but the action had been dismissed, without prejudice, before final judgment. *Held,* the mere commencement of the action constituted an irrevocable election by the conditional vendor.

Conditional Sales Contracts—Continued Use by Vendee—Waiver of Rescission. *Holland Furnace Co. v. Korth,* 143 Wash. Dec. 570, 262 P.2d 772 (1953), was an action to recover the amount due on a contract for converting the defendant's heating plant from gas to oil. The defendant had given notice of rescission on the grounds of fraud, but continued to use the heating equipment. The court held that the continued use did not constitute a waiver or abandonment of the rescission. An attempted rescission will not be defeated if the property was used merely in compliance with the purchaser's duty as bailee of the seller, and not for the purchaser's personal benefit. The expense of dismantling, removal, and storage of the heating system "would have more than offset deterioration resulting from continued use of the installation until such time as the seller performed his duty of removing it."

Defective Performance—Discharge of Seller by Voluntary Acceptance. *Angeles Gravel & Supply Co. v. Clallam County Hospital,* 42 Wn.2d 827, 259 P.2d 366 (1953) was an action for the balance due for concrete sold by the plaintiffs. The defendants claimed that there were shortages in the deliveries, though it appeared that no very positive complaints were made while the pouring of the concrete was in progress nor until some time thereafter. *Held,* the defendants were estopped to raise the issue of shortage. The court was satisfied that the facts justified an application of the theory of a discharge by voluntary acceptance of a defective performance. The application of the rule was "motivated by considerations of fair dealing between the parties and the necessity of the party claiming a shortage to establish it in time so that defective performance can be remedied."

TAXATION

Inheritance Taxes-Insurance Proceeds. The insured was the owner of life insurance policies the proceeds of which were payable to designated beneficaries, the wife and son of the insured. Prior to his death, the insured assigned the policies with the consent of the beneficiaries

[2] Madden v. Herzog, *supra* note 1. The other cases listed contain similar statements. And see Judge Weaver's strong comment on this point in Peterson v. Schoonover, 42 Wn.2d 621, 257 P.2d 209 (1953). Similar is Eder v. Nelson, 143 Wash. Dec. 495, 262 P.2d 180 (1953). These latter two are the only cases handed down in 1953 concerning Negotiable Instruments. Their value as precedent is considered to warrant no more than footnote mention here.